

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

ANGELITA ASUNCION,

Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,

Defendant,

v.

SSAOGC,

Interested Party.

Case No. 11-cv-651-JPG-CJP

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiff Angelita Asuncion's Motion for Leave to Proceed *in Forma Pauperis* (Doc. 4) without prepayment of fees and costs.

A federal court may permit an indigent party to proceed without pre-payment of fees. 28 U.S.C. § 1915(a)(1) (2006). Nevertheless, a court can deny a qualified plaintiff leave to file *in forma pauperis* or can dismiss a case if the action is clearly frivolous or malicious. *Id.* § 1915(e)(2)(B)(i). The test for determining if an action is frivolous or without merit is whether the plaintiff can make a rational argument on the law or facts in support of the claim. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Corgain v. Miller*, 708 F.2d 1241, 1247 (7th Cir. 1983). When assessing a motion to proceed *in forma pauperis*, a district court should inquire into the merits of the plaintiff's claims, and if the court finds them to be frivolous, it should deny leave to proceed *in forma pauperis*. *Lucien v. Roegner*, 682 F.2d 625, 626 (7th Cir. 1982).

The Court is satisfied from Asuncion's affidavit that she is indigent. Furthermore, the Court does not find anything in the file to indicate that this action is frivolous or malicious. Accordingly, the Court **GRANTS** Asuncion's Motion for Leave to Proceed *in Forma Pauperis* (Doc. 4) without prepayment of fees and costs. The Court notes, however, that should it become apparent that the action is frivolous or malicious at any time in the future, it may dismiss the case pursuant to § 1915(e)(2)(B)(i).

If Asuncion wishes the United States Marshal Service to serve process in this case, the Court **DIRECTS** her to provide the United States Marshal Service with the summons issued in this case, the appropriately completed USM-285 forms, and sufficient copies of the complaint for service.

The Court further **DIRECTS** the United States Marshal, upon receipt of the aforementioned documents from Asuncion and pursuant to Federal Rule of Civil Procedure 4(c)(3), to serve a copy of the summons, complaint, and this memorandum and order upon the defendant in any manner consistent with Federal Rule of Civil Procedure 4, as directed by Asuncion.

IT IS SO ORDERED.
DATED: August 1, 2011

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE